

Nuclear Regulatory Commission

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written motions or requests shall be filed within 5 days after service unless the Commission or Presiding Officer directs otherwise.

(c) The Presiding Officer may entertain motions for extension of time and changes in schedule in accordance with paragraphs (a) and (b) of this section.

(d) When the Commission does not preside, in response to a motion or request, the Presiding Officer may refer a ruling or certify a question to the Commission for decision and notify the participants.

(e) Unless otherwise ordered by the Commission, a motion or request, or the certification of a question or referral of a ruling, shall not stay or extend any aspect of the hearing.

§ 2.1326 Burden of proof.

The applicant or the proponent of an order has the burden of proof.

§ 2.1327 Application for a stay of the effectiveness of NRC staff action on license transfer.

(a) Any application for a stay of the effectiveness of the NRC staff's order on the license transfer application shall be filed with the Commission within 5 days of the issuance of the notice of staff action pursuant to § 2.1316(a).

(b) An application for a stay must be no longer than 10 pages, exclusive of affidavits, and must contain:

(1) A concise summary of the action which is requested to be stayed; and

(2) A concise statement of the grounds for a stay, with reference to the factors specified in paragraph (d) of this section.

(c) Within 10 days after service of an application for a stay under this section, any participant may file an answer supporting or opposing the granting of a stay. Answers must be no longer than 10 pages, exclusive of affidavits, and should concisely address the matters in paragraph (b) of this section, as appropriate. No further replies to answers will be entertained.

(d) In determining whether to grant or deny an application for a stay, the Commission will consider:

(1) Whether the requestor will be irreparably injured unless a stay is granted;

(2) Whether the requestor has made a strong showing that it is likely to prevail on the merits;

(3) Whether the granting of a stay would harm other participants; and

(4) Where the public interest lies.

§ 2.1328 Default.

When a participant fails to act within a specified time, the Presiding Officer may consider that participant in default, issue an appropriate ruling and proceed without further notice to the defaulting participant.

§ 2.1329 Waiver of a rule or regulation.

(a) A participant may petition that a Commission rule or regulation be waived with respect to the license transfer application under consideration.

(b) The sole ground for a waiver shall be that, because of special circumstances concerning the subject of the hearing, application of a rule or regulation would not serve the purposes for which it was adopted.

(c) Waiver petitions shall specify why application of the rule or regulation would not serve the purposes for which it was adopted and shall be supported by affidavits to the extent applicable.

(d) Other participants may, within 10 days, file a response to a waiver petition.

(e) When the Commission does not preside, the Presiding Officer will certify the waiver petition to the Commission, which, in response, will grant or deny the waiver or direct any further proceedings.

§ 2.1330 Reporter and transcript for an oral hearing.

(a) A reporter designated by the Commission will record an oral hearing and prepare the official hearing transcript.

(b) Except for any portions that must be protected from disclosure in accordance with law and policy as reflected in 10 CFR 2.790, transcripts will be placed at the NRC Web site, <http://www.nrc.gov>, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

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(c) Corrections of the official transcript may be made only as specified by the Secretary.

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§2.1331 Commission action.

(a) Upon completion of a hearing, the Commission will issue a written opinion including its decision on the license transfer application and the reasons for the decision.

(b) The decision on issues designated for hearing pursuant to §2.1308 will be based on the record developed at hearing.

APPENDIX A TO PART 2—STATEMENT OF GENERAL POLICY AND PROCEDURE: CONDUCT OF PROCEEDINGS FOR THE ISSUANCE OF CONSTRUCTION PERMITS AND OPERATING LICENSES FOR PRODUCTION AND UTILIZATION FACILITIES FOR WHICH A HEARING IS REQUIRED UNDER SECTION 189A OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED*

The following statement of general policy and procedure explains in detail the procedures which the Nuclear Regulatory Commission expects to be followed by atomic safety and licensing boards in the conduct of proceedings relating to the issuance of construction permits for nuclear power and test reactors and other production or utilization facilities for which a hearing is mandatory under section 189a of the Atomic Energy Act of 1954, as amended (the Act) and the Energy Reorganization Act of 1974.¹ The provisions are also applicable to proceedings for the issuance of operating licenses for such facilities, except as the context would otherwise indicate, or except as indicated in section VIII. Section VIII sets out the procedures specifically applicable to operating license proceedings. The Statement reflects the Commission's intent that such proceedings be conducted expeditiously and its concern that its procedures maintain sufficient flexibility to accommodate that objective. This position is founded upon the recognition that fairness to all the parties in such cases and

the obligation of administrative agencies to conduct their functions with efficiency and economy, require that Commission adjudications be conducted without unnecessary delays. These factors take on added importance in nuclear power reactor licensing proceedings where the growing national need for electric power and the companion need for protecting the quality of the environment call for decision making which is both sound and timely. The Commission expects that its responsibilities under the Atomic Energy Act of 1954, the National Environmental Policy Act of 1969 and other applicable statutes, as set out in the statement which follows, will be carried out in a manner consistent with this position in the overall public interest.

Atomic safety and licensing boards are appointed from time to time by the Commission or the Chairman of the Atomic Safety and Licensing Board Panel to conduct hearings in licensing cases under the authority of section 191 of the Act. Section 191 authorizes the Commission to establish one or more atomic safety and licensing boards to conduct public hearings and to make intermediate or final decisions in administrative proceedings relating to granting, suspending, revoking or amending licenses issued by the Commission. It requires that each board consist of one member who is qualified in the conduct of administrative proceedings and two members who have such technical or other qualifications as the Commission deems appropriate to the issues to be decided. Members of each board may be appointed by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel from a panel selected from private life, the staff of the Commission or other Federal agencies.

An Atomic Safety and Licensing Board may at its discretion appoint special assistants to the Board from the membership of the Atomic Safety and Licensing Board Panel established by the Commission. These special assistants are to be employed to facilitate the hearing process and improve the quality of the record produced for review. The special assistants may serve as technical interrogators in their individual fields of expertise, alternate Atomic Safety and Licensing Board members to sit with the Board and participate in the evidentiary sessions on the issue for which the alternate members were designated, Special Masters to hear evidentiary presentations by the parties on specific technical matters upon the consent of all parties, or informal consultants to brief the board prior to the hearing on the general technical background of subjects involving complex issues. The term "alternate board member" as a "special assistant" within the meaning of 10 CFR 2.722(a)(3) should not be

*In the event of any conflict between the provisions of this appendix and any section of this part, the section governs.

¹Except as the context may otherwise indicate, this statement is also generally applicable to licensing proceedings of the type described in the statement which may be conducted by a hearing examiner as the presiding officer.